Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates	)	IB Docket No. 04-398
On U.S. Customers	)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ ("CTIA") hereby submits these reply comments in response to the initial round of comments in the above-captioned proceeding.[1] The record demonstrates that foreign regulators are examining mobile termination rates ("MTRs"), and these rates are declining. The U.S. interexchange carriers' demands thus are unjustified and their calls for FCC action are unwarranted. Instead, the Commission should heed the calls to observe the tenets of international comity and should address any matters of concern (for example, if discrimination against U.S. callers were found) through discussions with its regulatory counterparts abroad.

I. THE RECORD RESOUNDINGLY AFFIRMS, AGAIN, THAT FOREIGN REGULATORS ARE EXAMINING MOBILE TERMINATION RATES AND ARE INTERVENING – AND RATES ARE DECLINING, ESPECIALLY IN MARKETS THAT U.S. CONSUMERS CALL MOST OFTEN

A. The Record Does Not Demonstrate That There Is a Significant "Problem" Warranting Commission Action

The U.S. interexchange carriers ("IXCs") decry the current state of mobile termination rates in foreign markets. AT&T, MCI, and Sprint each claims that the number of routes for

[1] *See* In the Matter of The Effect of Foreign Mobile Termination Rates on U.S. Customers, IB Docket No. 04-398, *Notice of Inquiry*, FCC 04-247 (rel. Oct. 26, 2004)("*NOI*").

which it pays a mobile termination charge has increased in the past several years.[2] Each asserts that the rates charged for termination on foreign mobile networks are unreasonably high – and that Commission action in some form or other is necessary.[3] Yet, as the GSM Association states, MTRs "may not impose the cost burdens to U.S. consumers that some suggest, or at least not in the global manner that the Commission describes."[4]

Vodafone explains that foreign carriers have been "de-averaging" their settlement rates for fixed and mobile termination in the past several years – a process resulting in transparent pricing signals that should be supported by the Commission and U.S. carriers alike.[5] As Vodafone observes, any move from averaged to de-averaged prices "is likely to result in an increase in some perceived prices and a reduction in others"[6] – but, as CTIA noted, the fact that mobile termination charges are appearing on more U.S. international routes "should not be construed to mean that U.S. consumers are paying unreasonably high MTRs."[7] Nor does it mean that overall total costs for terminating U.S. international traffic have increased for U.S. carriers.[8] Indeed, even as commenters note the overall increase in U.S. international traffic and the significant growth in U.S. traffic bound for foreign mobile networks, the Commission's most

[2] *See* Comments of AT&T Corp., IB Docket No. 04-398, at 2 (filed Jan. 14, 2005)("AT&T Comments"); Comments of Sprint Corporation, IB Docket No. 04-398, at 12 (filed Jan. 14, 2005); Comments of MCI, Inc., IB Docket No. 04-398, at 5 (filed Jan. 14, 2005)("MCI Comments").

[3] AT&T, for example, calls for a mobile benchmarks policy premised on its conclusion that any MTR above $0.04/minute is too high. As discussed below, AT&T's methodology is flawed and, in any event, a benchmarks policy is inapposite here. *See* Part II *infra*.

[4] Comments of the GSM Association, IB Docket No. 04-398, at 13 (filed Jan. 14, 2005)("GSM Association Comments").

[5] *See* Comments of Vodafone, IB Docket No. 04-398, at 3-5 (filed Jan. 14, 2005)("Vodafone Comments").

[6] *Id.* at 5.

[7] Comments of CTIA – The Wireless Association™, IB Docket No. 04-398, at 2-3 (filed Jan. 14, 2005)("CTIA Comments").

[8] *See* Vodafone Comments at 5.

recent report on international traffic trends concludes that U.S. net settlement payments to foreign carriers *are decreasing*.[9]

While the IXCs' comments would lead one to believe that MTRs are a growing, widespread problem, as discussed below the comments of CTIA and others demonstrate that national regulatory authorities ("NRAs") are acting, and on the most significant routes, rates are coming down.

B. Foreign Regulators Are Actively Reviewing Mobile Call Termination

The initial round of comments once again demonstrates that NRAs already are undertaking reviews of MTRs in their markets and are regulating rates they deem unreasonably high. MTRs affect all callers – domestic and foreign alike. As CTIA and NTT DoCoMo note, the interests of U.S. international carriers, U.S. consumers, and the Commission are aligned with their foreign counterparts – "they all share the same economic and regulatory interests in lower mobile termination rates."[10] NRAs' actions to lower MTRs thus are benefiting both foreign callers and U.S. callers.

In addition to the Commission's own extensive list of NRA activity provided at Appendix B of the *NOI*, the Swiss regulator submitted comments describing its own efforts, and

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[9] *See* Federal Communications Commission, Strategic Analysis and Negotiations Division, Multilateral Negotiations and Industry Analysis Branch, International Bureau, *2003 International Telecommunications Data* at 1 (Jan. 2005). Comptel/Ascent suggests elsewhere that foreign mobile operators' on-net mobile-to-mobile rates reflect discrimination that harms U.S. consumers. Yet this practice, prevalent in the U.S. CMRS market as well, is the direct result of a competitive wireless market and advances consumer welfare. With respect to on-net pricing in foreign markets, Vodafone concludes "[t]hey have no relevance to US consumers." Vodafone Comments at 30.

[10] Comments of NTT DoCoMo, Inc., IB Docket No. 04-398, at 3 (filed Jan. 14, 2005)("DoCoMo Comments"); *see also* CTIA Comments at 7.

regulators in the Caribbean also report that actions are under way in that region as well.[11] Vodafone supplemented the record by describing ongoing actions in Hungary, Romania, Malta and Poland.[12] Although the IXCs are dismissive of foreign regulators' actions,[13] the record points to the trend CTIA cited in its comments – that oversight and regulation of mobile termination rates abroad is on the rise.

C. Empirical Evidence Demonstrates that Mobile Termination Rates are Declining in the Largest Markets for U.S. International Mobile-Bound Traffic

CTIA commissioned TeleGeography to examine mobile traffic trends, the volume of U.S. international traffic that terminates on foreign mobile networks, and the impact on U.S. carriers of mobile termination abroad. The report, attached hereto, quantifies the substantial growth in mobile subscribership and mobile usage abroad.[14] Further, the report demonstrates a significant and clear trend: the *de facto* cost of mobile termination for the largest U.S. international mobile-bound markets is falling dramatically.[15]

TeleGeography identified the ten largest destinations for U.S. international traffic terminating on mobile networks and determined that these routes account for approximately 51

[11] *See* Comments of the Caribbean Association of National Telecommunications Organizations, IB Docket No. 04-398, at 1-2 (filed Jan. 14, 2005); Comments of the Federal Office for Communications, Switzerland, IB Docket No. 04-398, at 2 (filed Jan. 14, 2005).

[12] *See* Vodafone Comments at Annex A. The NRA in Hungary recently imposed further reductions in mobile termination rates.

[13] *See* AT&T Comments at 23-24; Comments of CompTel/ASCENT, IB Docket No. 04-398, at 8-9 (filed Jan. 14, 2005); MCI Comments at 8-9.

[14] *See* Attachment, TeleGeography, "International Calls to Mobiles," at Figure 1 (Feb. 2005)("International Calls to Mobiles"). It is ironic that the U.S. IXCs claim that MTRs are depressing the volume of U.S. international traffic, *see* AT&T Comments at 18-19 & MCI Comments at 10, while all evidence indicates that mobile-bound traffic is growing significantly faster than fixed line traffic.

[15] TeleGeography derived the *de facto* cost of mobile termination by examining the wholesale charges for international termination to foreign mobiles on the Arbinet exchange from 2001-2003. *See* International Calls to Mobiles at 5-6. TeleGeography believes that the Arbinet wholesale rates constitute a reasonable proxy for both fixed and mobile termination rates. Moreover, the rates for international termination to foreign mobiles are directly relevant to U.S. consumers' interests.

percent of U.S. international mobile-bound traffic.[16] Based on their review of Arbinet wholesale rate and other market trend data for 2002 and 2003, TeleGeography concluded that "the *de facto* cost of mobile termination for the top ten countries for U.S.-originated traffic fell 44 percent from 2002 to 2003."[17]

While AT&T emphasizes the number of countries with mobile termination charges that exceed fixed rates and asserts that it was compelled to increase existing surcharges on 32 routes in January 2005, AT&T assiduously avoids identifying the amount or proportion of U.S. traffic terminating in these markets.[18] Contrary to AT&T's suggestions, NRAs are increasingly intervening and notably, the record shows that mobile termination rates are declining in the largest markets for U.S. traffic terminating on foreign mobiles.

II. U.S. IXCs' DEMANDS ARE UNJUSTIFIED AND THEIR CALLS FOR FCC ACTION ARE UNWARRANTED

A. Comparisons to Fixed Termination Rates or Mobile Interconnection Charges in RPP Markets are Inapposite and Consideration of a Uniform Cost Model or Benchmark for Mobile Termination in Foreign Wireless Markets is Unsound

The record demonstrates the complexities involved in assessing the reasonableness of MTRs in CPP markets – and provides compelling grounds why the FCC should avoid engaging in such a review. First, it is simply inaccurate to assert that mobile termination rates are excessive because they are higher than fixed termination rates in the same market. The U.K. regulator Oftel, for example, determined that mobile termination costs in the U.K. "are usually

[16] *Id.* at Figure 4 (identifying the ten largest markets for U.S. international mobile-bound traffic – Mexico, India, Guatemala, Dominican Republic, Canada, United Kingdom, Philippines, El Salvador, Malaysia, and Germany – and the amount of traffic per route).

[17] *Id.* at 6-7. The weighted average cost of mobile termination in the top ten countries for each year was derived from the Arbinet exchange wholesale rate, multiplied by the total volume of international traffic terminated on mobile phones in each country for that year. The percentage change between years was then calculated. *Id.* at 7.

[18] *See* AT&T Comments at 2-4, 21.

10 times greater than fixed termination costs."[19] Likewise, comparisons to mobile interconnection rates in RPP markets are equally inappropriate. As Vodafone explains, "RPP and CPP environments will produce a radically different structure of prices and volumes . . . because there are both substantial fixed costs in mobile businesses and substantial differences in the demand for subscription, for making calls to mobiles, for receiving calls on mobiles and for making calls from mobiles."[20] The Commission must reject the IXCs' inapposite comparisons.

The Commission should also dismiss the notion of devising a mobile termination cost model or benchmark to apply across all CPP markets. The record shows that cost modeling is a resource-intensive, complex process, as regulators abroad have spent years to develop mobile termination cost models for individual country markets. BellSouth and Vodafone, moreover, identify the numerous factors and considerations that must be accounted for in the development of a legitimate cost model or benchmark.[21] AT&T, in contrast, advocates a TSLRIC approach but would have the Commission abandon the underlying cost modeling exercise in favor of its R-TCP methodology. That AT&T's R-TCP methodology reaches a default mobile termination rate ($0.04/minute) well below what foreign regulators (such as the U.K.) have determined is appropriate using LRIC modeling, suggests that AT&T's methodology is more result-oriented than justifiable. Moreover, commenting parties demonstrate that a single cost model cannot be

[19] Comments of BellSouth Corporation, IB Docket No. 04-398, at 3 (filed Jan. 14, 2005)("BellSouth Comments")(footnote omitted).

[20] Vodafone Comments at 14; *see also* GSM Association Comments at 10. Likewise, MCI's claims that U.S. consumers are providing annual subsidies of hundreds of millions of dollars to foreign mobile operators is necessarily flawed because its figures are based on absurdly low, "apples versus oranges" comparisons of termination rates in CPP and RPP environments.

[21] *See* BellSouth Comments at 19-20; Vodafone Comments at 17-21. For example, factors include differences in teledensity, in peak/off-peak traffic ratios, in call duration, in usage volume, in input prices.

applied consistently to all foreign markets.[22] Indeed, as Western Wireless International stated, "[n]o regulator in the world has ever attempted to develop a cost model that captures all of the salient aspects of mobile termination outside of the immediate country."[23] These considerations militate strongly against the Commission engaging in an extraterritorial cost modeling exercise.

B. The Commission's *Benchmarks* Regime is Unsuitable and Inapplicable

AT&T again asserts that the Commission's 1997 *Benchmarks* regime applies to traffic terminating on foreign mobile networks.[24] Once again, AT&T is wrong. As CTIA previously observed, "the benchmarks developed by the Commission were intended to apply to the foreign carriers with which U.S. carriers had traditional fixed line correspondent relationships."[25] Indeed, the *Benchmarks* regime did not consider the underlying tariffs for mobile services at all.[26]

Moreover, a benchmarks strategy is unsuitable in the MTR context. As Western Wireless International observed, "the fact that strong incentives exist for foreign regulators and foreign carriers alike to seek lower mobile termination rates makes the situation respecting foreign mobile termination significantly different from the situation faced by the Commission when it decided to regulate international settlement rates."[27] MTRs affect all callers, and all originating carriers (domestic and international) and foreign regulators are aligned with their U.S. counterparts in seeking to lower unreasonably high MTRs. NRAs have already demonstrated a

[22] *See* BellSouth Comments at 18-20; Comments of Orange SA, IB Docket No. 04-398, at 6-7 (filed Jan. 14, 2005)("Orange SA Comments"); Vodafone Comments at 16-20, 22-23; Comments of Western Wireless International Corporation, IB Docket No. 04-398, at 8-10 (filed Jan. 14, 2005)("Western Wireless International Comments").

[23] Western Wireless International Comments at 8.

[24] *See* AT&T Comments at 31-32.

[25] *Ex Parte* Comments of CTIA, IB Docket No. 02-324, at 2 (filed Mar. 4, 2004).

[26] *See id.*

[27] Western Wireless International Corporation Comments at 3.

commitment to take action, and MTRs are coming down. There is no reason to believe that these trends will not continue and thus a benchmarks-style approach is unwarranted and unnecessary.

C. Commission Jurisdiction is Doubtful and in Any Event, The Commission Should Heed the Calls to Observe the Tenets of International Comity

Several commenters raise questions regarding the Commission's jurisdiction to intervene in foreign MTRs. NTT DoCoMo observes that "the Commission's jurisdiction does not extend so far as to empower it to regulate the *domestic* charges imposed by foreign mobile operators on *domestic* fixed-line carriers and other *domestic* users in their home country."[28] As a matter of comity, moreover, the Commission should refrain from injecting itself into the purely domestic interconnection matters of a sovereign nation.[29] The GSM Association in particular noted that the principles of international comity dictate that "the Commission should consider, among other things, 'the extent to which other states regulate such activities,' 'the extent to which another state may have an interest in regulating the activity,' and 'the likelihood of conflict with regulation by another state.'"[30] Since the adoption of the WTO Basic Telecom Agreement, the number of independent foreign regulators has increased dramatically and the Commission has endeavored to foster this trend. Foreign regulators have a significant responsibility to serve their consumers' interests on the MTR issue and they are doing so.[31] If the Commission seeks to ensure that the interests of U.S. consumers are protected, it should engage with NRAs on a bilateral and multilateral basis if circumstances so warrant.

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[28] DoCoMo Comments at 5-6(emphasis in original).

[29] *See* GSM Association Comments at 2-4.

[30] *Id.* at 5 (*quoting* Restatement (Third) of Foreign Relations Law of the United States § 403(1) (1987))(emphasis in original).

[31] Moreover, ITU-T Study Group 3 is set to begin examining MTR issues in 2005.

III. THE RECORD REFLECTS NO EVIDENCE OF WIDESPREAD OR SIGNIFICANT DISCRIMATION

An appropriate focus for the Commission's attention on the issue of foreign MTRs is whether foreign operators are imposing discriminatory rates against U.S. or international mobile-bound traffic. As CTIA previously noted, there are no differences between mobile termination costs for domestic-originated and international-originated traffic, and U.S. consumers should thus benefit from NRA actions to reduce MTRs.[32] The record demonstrates there is no widespread or significant discrimination.[33] CTIA believes, however, that if matters of concern were to arise – for example, if the Commission were to find discrimination against U.S. consumers – it should engage in bilateral or multilateral discussions with its regulatory counterparts abroad. CTIA concurs with BellSouth's assessment, that in such a case the Commission should "take the approach articulated in the *ISP Reform Order* – to work with its foreign counterparts on a case-by-case basis to address the situation."[34] This approach will enable the Commission to protect the interests of U.S. consumers while acting in accordance with the priniciples of international comity and without injecting itself into domestic regulatory matters abroad.

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[32] *See* CTIA Comments at 7.

[33] *See, e.g.,* Comments of Verizon, IB Docket No. 04-398, at 5-6 (filed Jan. 14, 2005); Orange SA Comments at 8; Vodafone Comments at 9-10.

[34] BellSouth Comments at 22 (*citing* International Settlement Policy Reform, International Settlement Rates, IB Docket Nos. 02-324, 96-261, *First Report and Order*, 19 FCC Rcd 5709, 5731 (2004)).

IV. CONCLUSION

For the reasons discussed above, CTIA urges the Commission to refrain from pursuing a rulemaking proceeding on mobile termination rates and instead, where appropriate, engage in bilateral or multilateral discussions to address any matters of concern, such as mobile termination charge discrimination against U.S. consumers.

Respectfully submitted,

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